Michigan Law Review

VOLUME 95
1996-1997

The University of Michigan
Law School

Michigan Law Review
Ann Arbor, Michigan 48109-1215

CONTENTS

VOLUME 95

Subject Index iii

Articles vii

Notes ix

Authors x

Books Reviewed xii

Copyright © 1997
By THE MICHIGAN LAW REVIEW
ASSOCIATION

SUBJECT INDEX

(a) after a reference indicates an article; (c) correspondence; (n) note; (r) book review.

ABORTION

Casey Standard for Evaluating Facial Attacks on Abortion Statutes, The — *John Christopher Ford* (n) 1443-71

AFFIRMATIVE ACTION PROGRAMS

Values, Symbols, and Facts in the Affirmative Action Debate — *Deborah C. Malamud* (r) 1668-714

ATTORNEY'S FEES

See *Pro Se Litigants.*

BANKRUPTCY

Immovable Object Versus the Irresistible Force: Rethinking the Relationship Between Secured Credit and Bankruptcy Policy, The — *Lawrence Ponoroff & F. Stephen Knippenberg* (a) 2234-307

BIAS CRIMES

See *Criminal Law.*

BUSINESS

Folklore of Investor Capitalism, The — *John C. Coffee, Jr.* (r) 1970-89

CAMPAIGN FUNDS

More Sensible Approach to Regulating Independent Expenditures: Defending the Constitutionality of the FEC's New Express Advocacy Standard, A — *Michael D. Leffel* (n) 686-718

CIVIL RIGHTS

See *Constitutional Law.*

CLASS ACTIONS

See *Mass Torts.*

COASE THEOREM

See *Vertical Antitrust Restraints.*

COMMUNICATIONS

See *Obscenity.*

COMPARATIVE LAW

Three Arguments for Gay Rights — *Andrew Koppelman* (r) 1636-67

COMPUTER SOFTWARE

See *Copyright.*

CONSTITUTIONAL HISTORY

Early Interpretations & Original Sins — *Christopher L. Eisgruber* (r) 2005-26

CONSTITUTIONAL LAW

See also *Abortion, Taxation.*

Antidisestablishmentarianism: Why RFRA Really Was Unconstitutional — *Jed Rubenfeld* (a) ____-____

Attainder and Amendment 2: *Romer*'s Rightness — *Akhil Reed Amar* (a) 203-35

Is Amendment 2 *Really* a Bill of Attainder? Some Questions about Professor Amar's Analysis of *Romer* — *Roderick M. Hills, Jr.* (c) 236-54

Taking Our Actual Constitution Seriously — *Thomas D. Eisele* (r) 1799-838

COPYRIGHT

Is Turn About Fair Play? Copyright Law and the Fair Use of Computer Software Loaded into RAM — *Chad G. Asarch* (n) 654-85

CORPORATE TAXES

See *Limited Liability Companies.*

CORPORATIONS

See *Business.*

CRIMINAL LAW

Between Economics and Sociology: The New Path of Deterrence — *Dan M. Kahan* (c) 2477-97

Deterrence's Difficulty — *Neal Kumar Katyal* (a) 2385-476

Lynching Ethics: Toward a Theory of Racialized Defenses — *Anthony V. Alfieri* (a) 1063-104

CRITICAL RACE THEORY

See also *Criminal Law, Legal Education, Legal Profession.*

Afterword: Other Americas — *Angela P. Harris* 1150-58

Foreword: "Racialism" and Reason — *Frank I. Michelman* 723-40

DEBTOR AND CREDITOR

See *Bankruptcy.*

DELEGATION OF POWERS

See also *Representative Government.*

DISCRIMINATION

See also *Constitutional Law.*
You Say You Want a Revolution? The Case Against the Transformation of Culture Through Antidiscrimination Laws — *Roderick M. Hills, Jr.* (r) 1588-635

DOMESTIC VIOLENCE

Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender — *Leslie G. Espinoza* (a) 901-37

DUE PROCESS OF LAW

See *Land Use.*

ECONOMIC JURISPRUDENCE

See *Criminal Law, Ethics.*

ENVIRONMENTAL PROTECTION

Revitalizing Environmental Federalism — *Daniel C. Esty* (a) 570-653

ETHICS

Human Flourishing and Limits on Markets — *John A. Robertson* (r) 2139-59
Is Morality Like the Tax Code? — *Larry Alexander* (r) 1839-50

FAIR USE DOCTRINE

See *Copyright.*

FEDERALISM

See *Environmental Protection.*

FEDERAL RULES OF CIVIL PROCEDURE

See *Pro Se Litigants.*

FEMINIST JURISPRUDENCE

See *Legal Education.*

FIRST AMENDMENT PROTECTIONS

See also *Campaign Funds, Radio and Television.*
Equality and Autonomy in First Amendment Jurisprudence — *Robert Post* (r) 1517-41

FOREIGN LAW

Securing Russia's Future: A Plea for Reform in Russian Secured Transactions Law — *Jason J. Kilborn* (n) 255-95

FOREIGN RELATIONS OF THE UNITED STATES

See *Separation of Powers.*

FRANCHISING

See *Vertical Antitrust Restraints.*

FREEDOM OF RELIGION

See also *Delegation of Powers.*
Restoring Rights to Rites: The Religious Motivation Test and the Religious Freedom Restoration Act — *Steven C. Seeger* (n) 1472-513

FREEDOM OF SPEECH

See also *Obscenity.*
First Amendment Comes of Age: The Emergence of Free Speech in Twentieth-Century America, The — *G. Edward White* (a) 299-392

GOVERNMENT

Congressional Ethics and Constituent Advocacy in an Age of Mistrust — *Ronald M. Levin* (a) 1-110

HERMENEUTICS

Politics of Postmodern Jurisprudence, The — *Stephen M. Feldman* (a) 166-202

HOMOSEXUALITY AND LESBIANISM

See also *Comparative Law, Constitutional Law, Marriage.*
Should There Be Homosexual Marriage? And If So, Who Should Decide? — *Richard A. Posner* (r) 1578-87

IMPLIED RIGHT OF ACTION

Implied Cause of Action Under the Real Estate Settlement Procedures Act, An — *Christopher L. Sagers* (n) 1381-403

INSURANCE

Theory of Insurance Policy Interpretation, A — *Kenneth S. Abraham* (a) 531-69

INTERNATIONAL LAW

Globalization, International Institutions, and the Erosion of National Sovereignty and Democracy — *Phillip R. Trimble* (r) 1944-69

INTERNATIONAL SECURITIES REGULATION

Securities Disclosure in a Globalizing Market: Who Should Regulate Whom — *Merritt B. Fox* (a) 2498-632

JURISPRUDENCE

See also *Constitutional Law.*

Modern Jurisprudence, Postmodern Jurisprudence, and Truth — *Ken Kress* (r) 1871-926

Narrowing of English Jurisprudence, The — *Neil Duxbury* (r) 1990-2004

LABOR LAW

On-Call Time Under the Fair Labor Standards Act — *Eric R. Phillips* (n) 2633-55

LAND USE

Determining Ripeness of Substantive Due Process Claims Brought by Landowners Against Local Governments — *David S. Mendel* (n) 492-527

LAW AND LITERATURE

Law and Fancy — *Robin West* (r) 1851-70

LEGAL EDUCATION

See also *Domestic Violence.*

Vampires Anonymous and Critical Race Practice — *Robert A. Williams, Jr.* (a) 741-65

Whose Law Is This Anyway? — *Christine A. Littleton* (r) 1560-77

LEGAL HISTORY

See also *Freedom of Speech, Jurisprudence.*

Elusive Truth About Holmes, The — *A.W. Brian Simpson* (r) 2027-43

Simpson's Leading Cases — *Robert W. Gordon* (r) 2044-54

LEGAL POSITIVISM

See *Legal Profession.*

LEGAL PROFESSION

Beyond "Sellouts" and "Race Cards": Black Attorneys and the Straitjacket of Legal Practice — *Margaret M. Russell* (a) 766-94

Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America — *Eric K. Yamamoto* (a) 821-900

Rodrigo's Thirteenth Chronicle: Legal Formalism and Law's Discontents — *Richard Delgado* (a) 1105-49

Straightjacketing Professionalism: A Comment on Russell — *David B. Wilkins* (c) 795-820

Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective, The — *Alex M. Johnson, Jr.* (a) 1005-62

LIMITED LIABILITY COMPANIES

Limited Liability Company: A Catalyst Exposing the Corporate Integration Question, The — *Susan Pace Hamill* (a) 393-446

MARRIAGE

See also *Homosexuality and Lesbianism.*

What If? The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples — *David L. Chambers* (a) 447-91

MASS TORTS

Judicial Centralization and Devolution in Mass Torts — *Francis E. McGovern* (r) 2077-89

MEDICAL JURISPRUDENCE

See *Scientific Evidence.*

MINORITIES

See *Legal Profession.*

MORTGAGES

See *Implied Right of Action.*

NATIONAL SELF-DETERMINATION

See *International Law.*

OBSCENITY

Censorship and Media Violence — *Sissela Bok* (r) 2160-66

POLITICS

See *Representative Government.*

POPULATION

See *Sociology.*

PRO SE LITIGANTS

Awarding Attorney's Fees to Pro Se Litigants Under Rule 11 — *Jeremy D. Spector* (n) 2308-30

RACE

See also *Domestic Violence, Legal Profession, Social Welfare, Women.*

Devil and the One Drop Rule: Racial Categories, African Americans, and the U.S. Census, The — *Christine B. Hickman* (a) 1161-265

RADIO AND TELEVISION

Inevitable Wasteland: Why the Public Trustee Model of Broadcast Television Regulation Must Fail, The — *Ronald J. Krotoszynski, Jr.* (r) 2101-38

REPRESENTATIVE GOVERNMENT

Unwelcome Judicial Obligation to Respect Politics in Racial Gerrymandering Remedies, The — *Jeffrey L. Fisher* (n) 1404-42

SCHOOL INTEGRATION

End of Busing?, The — *Davison M. Douglas* (r) 1715-37

SCIENTIFIC EVIDENCE

Galileo's Tribute: Using Medical Evidence in Court — *Rochelle Cooper Dreyfuss* (r) 2055-76

SECURED TRANSACTIONS

See *Bankruptcy, Foreign Law.*

SEPARATION OF POWERS

Process Versus Policy in Foreign Relations: *Foreign Affairs and the United States Constitution* — *Michael J. Glennon* (r) 1542-59

SOCIAL WELFARE

Representing Race Outside of Explicitly Racialized Contexts — *Naomi R. Cahn* (a) 965-1004

SOCIOLOGY

Perpetual Motion — *Peter H. Schuck* (r) 1738-60

SOVEREIGNTY

See *International Law.*

SUBSTANCE ABUSE

See *Women.*

SUBVERSIVE ACTIVITIES

Chosen People in Our Wilderness, The — *Susan P. Koniak* (r) 1761-98

TAXATION

"Solely Criminal Purpose" Defense to the Enforcement of IRS Summonses, The — *Darius J. Mehraban* (n) 2331-42

Suspect Linkage: The Interplay of State Taxing and Spending Measures in the Application of Constitutional Antidiscrimination Rules — *Dan T. Coenen & Walter Hellerstein* (a) 2167-233

TORTS

Idea of Fairness in the Law of Enterprise Liability, The — *Gregory C. Keating* (a) 1266-380

VERTICAL ANTITRUST RESTRAINTS

Antitrust Balancing in a (Near) Coasean World: The Case of Franchise Tying Contracts — *Alan J. Meese* (a) 111-65

WOMEN

See also *Domestic Violence.*

Unshackling Black Motherhood — *Dorothy E. Roberts* (a) 938-64